Supreme Court, U.S.
FILED

(1)

02 1138 DEC 2 2002

OFFICE OF THE CLERK

No.

IN THE

SUPREME COURT OF THE UNITED STATES

JANUARY TERM, 2003

RANDALL G. STEPHENS,

Petitioner,

VS.

UNION CARBIDE CORPORATION ET. AL.

Respondents.

PETITION FOR WRIT OF CERTIORARI

TO THE SUPREME COURT OF OHIO

RANDALL G. STEPHENS
Petitioner Pro se
3434 East 117th Street
Cleveland, Ohio 44120-4308
(216) 491-8566

31 pp

QUESTIONS PRESENTED FOR REVIEW

OHIO RULE OF CIVIL PROCEDURE 12(B)(1), provides as follows:

"Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion; (1) lack of jurisdiction over the subject matter."

Did Presiding Judge Janet R. Burnside, error in dismissing Petitioner's intentional tort complaint with prejudice on the basis of Respondents' motion for Lack of Subject Matter Jurisdiction?

Did the Eighth District County of Cuyahoga Court of

Appeals of Ohio, error in dismissing Petitioner's motion for delayed reconsideration pursuant to Appellate Rule 26 on July 27, 2002?

Did the Ohio Supreme Court error in dismissing Petitioner's Appeal, ruling that the Court declined jurisdiction to hear the case and dismissed the appeal because it did not involve any substantial question?

PARTIES TO LITGATION

The Petitioner Randall G. Stephens, is a Black male of African ancestry, born August 7, 1951 at 10:15 A. M., in the United States of America, State of Ohio, County of Cuyahoga, and City of Cleveland. A registered voter, meeting all qualification as being a bona fide citizen of this country.

The Respondent Union Carbide Corporation, is a corporation duly organized and existing according to law and engaged in business in the State of Ohio. Corporate Offices are located at 39 Ridgebury Road Danbury, Connecticut 06817-0001 U. S. A. Now presently a subsidiary of Dow Chemical Company.

The Respondent William S. Sneath, was the former President of the Union Carbide Corporation, and had the responsibility of making all corporate decisions.

The Respondent Dr. William H. Joyce, is the present President of the Union Carbide Corporation, and has the responsibility of making all corporate decisions.

TABLE OF CONTENTS

CONTEXT	PAGE
QUESTIONS PRESENTED FOR REVIEW	i
PARTIES TO LITIGATION	ii
PETITION FOR CERTIORARI	1
OPINIONS BELOW	3
FEDERAL JURISDICTION	3
CONSTITUTIONS INVOLVED	4
STATEMENT OF FACTS	5
REASONS FOR GRANTING THE WRIT	12
QUESTIONS PRESENTED ARE NOT MOOT	15
CONCLUSION	16
APPENDIX	18
JOURNAL ENTRY OF COURT OF COMMON PLEAS CUYAHOGA COUNTY, OHIO	18
JOURNAL ENTRY OF COURT OF APPEALS OF OHIO EIGHTH DISTRICT COUNTY OF CUYAHOGA	

DATED DECEMBER 3, 1999 19

JOURNAL ENTRY OF COURT OF APPEALS OF OHIO

EIGHTH DISTRICT COUNTY OF CUYAHOGA

DATED DECEMBER 13, 1999 21

JOURNAL ENTRY OF COURT OF APPEALS OF OHIO

EIGHTH DISTRICT COUNTY OF CUYAHOGA

DATED JUNE 27, 2002 24

JOURNAL ENTRY OF THE SUPREME COURT

OF OHIO 25

TABLE OF AUTHORITIES

CASES PAGE

BLANKENSHIP VS. CINCINNATI MILACRON

CHEMICALS (1982) 69 OHIO ST. 2d 608 11

BRUNAUGH VS. WORLEY, 6 OHIO ST. 597,598

(1856) 11

PETITION FOR CERTIORARI - TO THE UNITED STATES SUPREME COURT - CIVIL RIGHTS; MANDAMUS TO REQUIRE LOCAL JUDGES TO RECOGNIZE PETITIONER AS A QUALIFIED CITIZEN OF THE STATE OF OHIO

Petitioner, Randall G. Stephens, prays that a Writ of Certiorari be issued based on whether the court has jurisdiction to hear my case which involves a substantial constitutional question and one of public and great general interest which judgment entry was entered on October 30, 2002 by the Supreme Court of Ohio which is in violation of the Due Process Clause of the Fourteenth Amendment of the United States Constitution of America. Said Appeal requested that Court to review the judgment entries of the Court of Appeals of Ohio Eighth District County of Cuyahoga and the Court of Common Pleas Cuyahoga County, Ohio (1) to determine whether or not Petitioner's

Civil Rights have been violated by the opinions and decisions of the Presiding Judge Janet R. Burnside, without taking into consideration the fact that I am a citizen of the United States who entered into an employment contract with the Union Carbide Corporation et. al., while residing in the State of Ohio; (2) to determine whether or not Petitioner was denied his rights as a qualified citizen born in the United States and residing in the City of Cleveland, Cuyahoga County, State of Ohio, under the employment contract with the Union Carbide Corporation et. al., to (3), determine whether or not Petitioner was prevented from having a fair and impartial trial before a jury as a citizen of the United States of America, residing in the State of Ohio seeking justice under my employment contract with the Union Carbide Corporation et. al?

THE SUPREME COURT OF OHIO JUDGMENT ENTRY

The Supreme Court of Ohio has entered a Judgment Entry in this case, a copy of which appear in the Appendix to this Petition, at page 25. A copy of the Journal Entry of the Court of Appeals of Ohio, Eighth District County of Cuyahoga appear in the Appendix to this Petition, at pages 19, 21 and 24. A copy of the Journal Entry of the Court of Common Pleas Cuyahoga County, Ohio appear in the Appendix to this Petition, at page 18. The Judgment Entry of the Supreme Court of Ohio, the Judgment entries of the Eighth District Cuyahoga County Court of Appeals and the Court of Common Pleas have not been reported.

FEDERAL JURISDICTION

TITLE 28 UNITED STATES CODE SECTION 1257(a)

Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be

reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

CONSTITUTIONS INVOLVED

This case involves the provision of Article I Section 5 of the Constitution of the State of Ohio. Said section reads as follows:

"The right of trial by jury shall be inviolate, except that, in civil cases, laws may be passed to authorize the rendering of a verdict by the concurrence of not less than three-fourths of the jury."

This case also involves Section 1 of the Fourteenth Amendment to the Constitution of the United States. Said section reads as follows:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF FACTS

Preliminarily, Petitioner respectfully requests this Court to note that time is of the essence in this case. The Petitioner is presently in vital need of medical, surgical,

nursing, and hospital attention and services and medicines to prevent him from becoming paralyzed. Until such medical treatment is provided the Petitioner, will endure excruciating pain and suffering, with gross physical deterioration of his lower extremity, severe stress and mental anguish. Being permanently and totally disabled, Petitioner will be unable to sustain self dependence and financial security. Petitioner is ready to meet any schedule for briefing and oral argument that the Court may wish to set. This Petition may, if Writ of Certiorari is granted and the Court wishes, be treated as Petitioner's brief on its merits. Telegraphic notice of all these steps has been given to counsel for Respondents. It is submitted that this expedited procedure is authorized by Section 4123.35(B), of the Ohio Revised Code.

Respondents in these proceedings is the Union Carbide Corporation et. al., Petitioner is an injured employee of this

"Self Insured Employer." On October 14, 1969 Petitioner sustained a severe and irremediable injury to his left knee in the course of his employment with the Respondents, which rendered him unable to engage in any substantial gainful activity. Petitioner duly filed a application with the Bureau of Workers' Compensation and Industrial Commission of Ohio, in compliance with law which is designated in the files as claim number 478839-22. October 12, 1971 these agencies of the State of Ohio, ruled in compliance with law that this claim be allowed; that compensation for disability be granted, inclusively, that medical bills for necessary treatment of such injury be paid. May 29, 1974 these agencies of the State of Ohio, in compliance with law ordered that the allowance of the claim be amended to include thrombophlebitis and pulmonary emboli. It was further ordered that compensation for temporary total disability be granted. November 4, 1986 it

was published by these agencies of the State of Ohio, in compliance with law that the Petitioner is permanently and totally disabled; that compensation for such disability be awarded. December 16, 1998 these agencies of the State of Ohio, in compliance with law amended the claim to include a disc herniation at L5 - S1 level of the Petitioner's spine.

Respondents, however, refuses to honor the provisions of the Ohio Revised Code Section 4123.35(B) Workers' Compensation Act. This section requires that a "Self Insured Employer" provide medical, surgical, nursing, and hospital attention and services and medicines. Respondents, has refused to live up to their obligation of the above statute for the past thirty-two years, consequently Petitioner has incurred judgments for hospital and other medical expenses of over thirty-five thousand dollars. During this time Petitioner has been continually denied necessary surgeries, medicines and is presently in need of surgery. Respondent's

refusal to continually disregard State Law then their acts as well as non acts can only be described as being acts of intentionally, tormentingly, torturing and totally controlling the Petitioner's life for the past Thirty-Two Years and is continuing to do what ever their desire may be even to this present time.

Because of the Respondents bad faith, Petitioner filed a intentional tort complaint in the Court of Common Pleas Cuyahoga County, Ohio in compliance with law on October 29, 1998 naming only the Respondents of this Petition. This case was assigned case number CV-368818 and to Trial Judge Janet R. Burnside, a Pre Trial Hearing for Summary Judgment was held on February 10, 1999 at 3:00 P. M., in the Judge's Chambers. February 12, 1999 the case was dismissed without prejudice.

Petitioner re-filed his intentional tort complaint in the Court of Common Pleas Cuyahoga County, Ohio in

compliance with law on May 13, 1999 naming the Respondents of this Petition along with seven employees of the State of Ohio, due to adverse rulings within the Bureau of Workers' Compensation and Industrial Commission of Ohio. This case was assigned case number CV-383935 and re-assigned to the docket of Judge Janet R. Burnside, on May 26, 1999.

July 12, 1999 Petitioner filed a motion for leave to file amended complaint instanter seeking to drop the seven employees of the State of Ohio, and to proceed prosecution against the Respondents of this Petition. July 20, 1999 Trial Judge Janet R. Burnside, granted Petitioner's motion for leave to file amended complaint. Next Trial Judge Janet R. Burnside, filed her Journal Entry dismissing the seven employees of the State of Ohio with out prejudice. See Appendix Page 18. July 23, 1999 Judge Janet R. Burnside, filed her Final Journal Entry dismissing Petitioner's case for

Lack of Subject Matter Jurisdiction with Prejudice. Petitioner filed a motion to reinstate his case, which was denied and dismissed on September 30, 1999.

October 22, 1999 twenty-three (23), days later Petitioner filed a timely Appeal, in the Court of Appeals of Ohio, Eighth District County of Cuyahoga, in compliance with law quoting the case of Blankenship vs. Cincinnati Milacron Chemicals (1982) 69 Ohio St. 2d 608; on page 620 third paragraph, Judge Celebrezze, C. J., and Sweeney, J., concur in the opinion. "That is, intentional torts fall outside the Workers' Compensation scheme, and jurisdiction for intentional torts done by employers to their employees lies in the Court of Common Pleas."

Secondly in the case of Brunaugh vs. Worley, 6 Ohio St. 597, 598 (1856), the Supreme Court of Ohio, has held that the Court of Common Pleas has no jurisdiction of the case, and could not therefore, pronounce judgment.

December 3, 1999 and December 13, 1999 the Court of Appeals of Ohio, Eighth District County of Cuyahoga announced and journalized their decision dismissing the appeal Sua Sponte Journal Entry Nos. 11660 and 12406.

June 24, 2002 Petitioner filed a Delayed Reconsideration which was filed in the Cuyahoga County, Court of Appeals Eighth Appellate District which was denied on June 27, 2002 pursuant to Appellate Rule 26. Petitioner then filed his Notice of Appeal to the Supreme Court of Ohio, on August 5, 2002 and his Motion for Default Judgment on October 3, 2002 which appeal was dismissed declining jurisdiction to hear the case as not involving any substantial constitutional question.

REASONS FOR GRANTING THE WRIT

This case concerns the rights of injured employees of "Self Insured Employers" that have committed an

intentional tort against their injured employees. Ohio Rule of Civil Procedure 12(B)(1), has been construed to deny these injured employees the right to acquire medical, surgical, nursing, and hospital attention and services and medicines, as well as compensation disability payments. Accordingly, important questions of federal constitutional law are presented which have not been, but should be, resolved by this Court.

The following statements appear in the Journal Entries of the Court of Common Pleas, Presiding Judge Janet R. Burnside, July 23, 1999 "Defendant's motion to dismiss for lack of subject matter jurisdiction is herby granted Final Volume 2363 Page 0198 notice issued case dismissed with PREJUDICE."

In the present case, Petitioner contends that the purpose of the constitutional amendment in question is to prevent "Self Insured Employers" from delaying and denying their

injured employees from their medical, surgical, nursing, and hospital attention and services and medicines. Ohio Revised Code Section 4123.35(B), sets forth the statutory requirements that such vital needs of injured employees are promptly met. The trial court application of Ohio Rule of Civil Procedure 12(B)(1), lack of jurisdiction over the subject matter, was used in a manner that would prevent injured employees from a fair and impartial proceedings to their trial day before a jury which is guaranteed by the United States Constitution. The concept of "we the people" under the Constitution visualizes no preferred individual but equality among those who meet the basic qualifications. This is required by the Equal Protection Clause of the Fourteenth Amendment.

The tendency of the law in this Country is to enforce a state statute not to ignore or disregard. We urge this Court to follow this tendency by extending equal protection of

the laws to the injured employees of a "Self Insured Employer" and individuals alike.

QUESTIONS PRESENTED ARE NOT MOOT

The argument may be advanced by Respondents Union Carbide Corporation et. al., that the questions presented by Petitioner's Petition for Writ of Certiorari are now moot. This argument, if advanced, is not valid. As can be seen from the record, Petitioner is permanently and totally disabled in crucial need of medical, surgical, nursing, and hospital attention and services and medicines. But the bigger Constitution question goes beyond the present case if Respondents, is allowed to get around their Constitutional obligation, then all workers' compensation laws in America regarding "Self Insured Employers" become unenforceable.

Secondly, the Respondents are by law compelled to

perform the same duties and acts, which they are obligated to perform and have been repeatedly ordered to perform since October 12, 1971 some thirty-Two (32), years ago and have not performed them as to this present time. The Petitioner should not have to live under the control of the Respondents Union Carbide Corporation et. al. Therefore, the questions presented are not moot.

CONCLUSION

WHEREFORE, Petitioner prays that a Writ of Certiorari issue from this Honorable Court to review the Journal Entry of the Supreme Court of Ohio, in Randall G. Stephens vs. Union Carbide Corporation et. al. In the event that the Petition is granted Petitioner prays that the judgment of the Court below be reversed, that the cause be remanded and set for a trial date before a jury to be conducted pursuant to Article I Section 16 of the Ohio State Constitution.

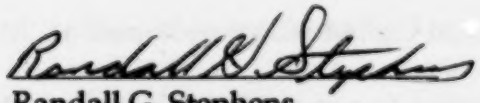
OHIO STATE CONSTITUTION ARTICLE I SECTION 16

REDRESS FOR INJURY; DUE PROCESS

All courts shall be open, and every person, for an injury done him in his land, goods, person, or reputation, shall have remedy by due course of law, and shall have justice administered without denial or delay. Suits may be brought against the state, in such courts and in such manner, as may be provided by law.

January 3, 2003 A. D.

Respectfully submitted by,



Randall G. Stephens,
Petitioner Pro se
3434 East 117th Street
Cleveland, Ohio 44120-4308
(216) 491-8566

APPENDIX

COURT OF COMMON PLEAS

CUYAHOGA COUNTY, OHIO

CIVIL CASE STATUS FORM

JOURNAL

DISMISSED WITH PREJUDICE

CASE NO 383935 ASSIGNED JUDGE J. R. BURNSIDE

Stephens vs. Union Carbide Corporation et. al.,

Union Carbide's 7/2/99 Motion to dismiss pursuant to Civ. R. 12(B) being unopposed & well taken is hereby granted; partial.

VOL 2363 PG 0197

Court of Appeals of Ohio, Eighth District

County of Cuyahoga

Gerald E. Fuerst, Clerk of Courts

RANDALL G. STEPHENS

Appellant COA NO. 77143 LOWER COURT NO. CP CV-383935

COMMON PLEAS COURT

-v-

UNION CARBIDE CORPORATION, ET AL

Appellee MOTION NO. 11660

Date 12/03/99

Journal Entry

MOTION BY APPELLEES' STATE OF OHIO,

ADMINISTRATOR OF B.W.C., ET AL TO DISMISS

PURSUANT TO APP. R. 4(A) IS GRANTED.

RECEIVED FOR FILING

DEC. 03 1999

GERALD E. FUERST
CLERK OF THE COURT OF APPEALS
BY _____

Judge KENNETH A. ROCCO, Concurs

_____

Presiding Judge
MICHAEL J. CORRIGAN

COPIES MAILED TO COUNSEL FOR
ALL PARTIES. - COSTS TAXED

VOL 0470 PG 0262

Court of Appeals of Ohio, Eighth District

County of Cuyahoga
Gerald E. Fuerst, Clerk of Courts

RANDALL G. STEPHENS

Appellant COA NO. 77143 LOWER COURT NO. CP CV-383935

COMMON PLEAS COURT

-v-

UNION CARBIDE CORPORATION, ET AL

Appellee MOTION NO. 12406

Date 12/03/99

Journal Entry

SUA SPONTE, APPEAL IS DISMISSED. SEE ENTRY NO 11660 DATED DECEMBER 3, 1999.

ANNOUNCEMENT OF DECISION
PER APP. R. 22(B), 22(D) AND 26(A)
RECEIVED

DEC 03 1999

GERALD E. FUERST
CLERK OF THE COURT OF APPEALS
BY _____ DEP.

FILED AND JOURNALIZED
PER APP. R. 22(E)

DEC 13 1999

GERALD E. FUERST
CLERK OF THE COURT OF APPEALS
BY _____DEP.

Judge KENNETH A ROCCO, Concurs

_____
Presiding Judge
MICHAEL J. CORRIGAN

N.B. This entry is an announcement of the court's decision. See App. R. 22(B), 22(D) and 26(A): Loc. App. R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App. R. 22(E) unless a motion for reconsideration with supporting brief, per App. R. 26(A), is filed within ten (10) days of the announcement of the court's decision. The time period for review by the Supreme Cou t of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App. R. 22(E). See, also S. Ct. Prac. R. II, Section

2(A)(1).

COPIES MAILED TO COUNSEL FOR
ALL PARTIES. - COSTS TAXED

VOL 0471 PG 0192 VOL 2410 PG 0273

Court of Appeals of Ohio, Eighth District

County of Cuyahoga
Gerald E. Fuerst, Clerk of Courts

RANDALL G. STEPHENS

Appellant COA NO. LOWER COURT NO.
77143 CP CV-383935
COMMON PLEAS COURT

-vs-

UNION CARBIDE CORPRATION, ET AL

Appellee MOTION 39424

Date 06/27/02

Journal Entry

MOTION BY APPELLANT FOR DELAYED

RECONSIDERATION IS DENIED PER APP. R. 26.

Judge KENNETH A ROCCO, Concurs

Administrative Judge
TIMOTHY E. MCMONAGLE

VOL 0527 PG 0725

THE SUPREME COURT OF OHIO

Randall G. Stephens Appellant,	:	Case No. 02-1346
v.	:	
Union Carbide Corporation et al., Appellees.	: : :	ENTRY

Upon consideration of the jurisdictional memoranda filed in this case, the Court declines jurisdiction to hear the case and dismisses the appeal as not involving any substantial constitutional question.

COSTS:

Docket Fee, $40.00, paid by Randall G. Stephens.

(Cuyahoga County Court of Appeals; No. 77134)

THOMAS J. MOYER
Chief Justice

0007r103002